the debt by the buyer. Those decisions, therefore, which do not so readily construe various acts of the seller as a binding election are preferable.[7]

But even where a doctrine of election obtains, the result reached in a recent case seems extreme and unwarranted. *Winton Motor Carriage Co.* v. *Broadway Automobile Co.*, 118 Pac. 817 (Wash.). The court holds that the mere transfer, as security for a loan, of the note given for the price in a contract for a conditional sale is such an election by the seller as to pass title immediately to the buyer. This decision seems to be contrary to well-settled principles of law in regard to the assignment of secured debts, as well as to the intent of the parties in the particular case. The law is well settled that the assignment of a debt carries with it a right to the security.[8] In like manner the assignment of the seller's claim for the purchase price in a conditional sale whether as a chose in action [9] or in the form of a promissory note [10] carries with it the right to the seller's interest in the property. The reasonable intent of the parties in this particular case, moreover, would seem to be that, since the bank as assignee was taking the note as security for a loan, it was to have all the security possible, connected with the note. The true consequence of the transfer of the note, therefore, it is submitted, was the vesting in the assignee of the right to the property, as security [11] rather than an abnormal springing of the title to the buyer.

CONTRIBUTORY NEGLIGENCE AS DEFENSE TO ACTIONS BASED ON STATUTES. — The general rule is that where a legal duty is imposed by statute, an action may be maintained for an injury caused by a breach of such duty by any individual for whose benefit the statute was enacted.[1] This right of action exists even if the statute does not provide

[7] Suing for the price is not a binding election. Forbes Piano Co. *v.* Wilson, 144 Ala. 586, 39 So. 645; Campbell Printing Press & Mfg. Co. *v.* Rockaway Pub. Co., 56 N. J. L. 676, 29 Atl. 681. Nor is taking a chattel mortgage on the property. First National Bank of Corning *v.* Reid, 122 Ia. 280, 98 N. W. 107. Nor is filing a lien claim. Bierce, Ltd. *v.* Hutchins, *supra*. Nor is an attempt to enforce a mechanic's lien. Warner Elevator Mfg. Co. *v.* Capitol Investment, Building & Loan Association, 127 Mich. 323, 86 N. W. 828.

[8] Where the security is a mortgage on land. See JONES, MORTGAGES, 6 ed., § 817 and cases cited in note. Where the security is a chattel mortgage. Gould *v.* Marsh, 1 Hun (N. Y.) 566. See JONES, CHATTEL MORTGAGES, 4 ed., § 503.

[9] Bank of Little Rock *v.* Collins, 66 Ark. 240, 50 S. W. 694; Cutting *v.* Whittemore, 72 N. H. 107, 54 Atl. 1098.

[10] Kimball Co. *v.* Mellon, 80 Wis. 133, 48 N. W. 1100; Ross-Meehan, etc. Co. *v.* Pascagoula Ice Co., 72 Miss. 608, 18 So. 364; Spoon *v.* Frambach, 83 Minn. 301, 86 N. W. 106. *Contra*, Merchants' & Planters' Bank *v.* Thomas, 69 Tex. 237, 6 S. W. 565. The fact that the conditions of the sale did not appear on the face of the note is no reason for an exception since the security usually passes with the note even if the assignee did not know of its existence. See JONES, MORTGAGES, 6 ed., § 817.

[11] It would probably be held in most jurisdictions that the assignee acquired not the legal title but an equitable right to the security, and that the assignor held the legal title in trust for the assignee. McPherson *v.* Acme Lumber Co., 70 Miss. 649, 12 So. 857.

[1] Ives *v.* Welden, 114 Ia. 476, 87 N. W. 408; Couch *v.* Steel, 3 E. & B. 402. See COM. DIG. TIT. ACTION UPON STATUTE, (A. 1); BISHOP, NON-CONTRACT LAW, § 132.

for a civil suit for damages.[2] The theory is that of an action on the case for negligence. The statute simply declares a certain act or omission to be "negligence *per se*."[3]

When contributory negligence as a defense to a statutory cause of action is involved, the decisions are not in perfect harmony. In two cases, however, the rule is uniform. First, where the statute declares a certain act or omission illegal, but is silent as to the civil remedy for violation thereof, contributory negligence will bar recovery, as in an ordinary action for negligence.[4] Second, it is equally well settled that nothing but fraud on the plaintiff's part will defeat the action, when the statute in terms eliminates the defense of contributory negligence.[5]

Where the statute not only creates a duty, but specifically provides that anyone failing in such duty shall be answerable in damages for any injury caused thereby, at the same time being silent as to the effect of contributory negligence, no one rule can be formulated which will apply to every case. The matter becomes one of statutory construction, and a consequent confusion exists among the authorities. In the great majority of cases the courts have discovered no intent to abrogate the common-law rule, but merely a desire to relieve the plaintiff from the burden of showing a want of reasonable care. The commonest instance is where a railroad omits the statutory signals on approaching a crossing.[6] To the large mass of similar cases [7] may be added a recent case involving the liability for an injury caused by an explosion of oil, which was sold in violation of a statute. The court held that the plaintiff was barred by his own negligence. *Morrison* v. *Lee*, 133 N. W. 548 (N. D.). On the other hand, the subject matter or phraseology of statutes have led the courts in at least three sorts of cases to reach an opposite result. Certain statutes of Illinois enacted in compliance with the state constitution to protect the lives of miners have been held to impose an absolute liability on the mineowner, if a wilful violation of the statutory duty results in injury.[8] The subject matter,

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In New York, violation of a statute is only *primâ facie* evidence of negligence. Knupfle *v.* Knickerbocker Ice Co., 84 N. Y. 488. Only those in whose favor the statute was enacted have a right of action. McDonnell *v.* Pittsfield & North Adams R. Corp., 115 Mass. 564; Williams *v.* Chicago & Alton R. Co., 135 Ill. 491, 26 N. E. 661.

[2] Couch *v.* Steel, *supra*; Hayes *v.* Michigan Central R. Co., 111 U. S. 228, 4 Sup. Ct. 369.

[3] Carswell *v.* Mayor, etc., of Wilmington, 2 Marv. (Del.) 360, 43 Atl. 169; Ives *v.* Welden, *supra*. See COOLEY, TORTS, 3 ed., 1408; 1 THOMPSON, COMM. ON THE LAW OF NEGLIGENCE, § 10.

[4] Queen *v.* Dayton Coal & Iron Co., 95 Tenn. 458, 32 S. W. 460; Browne *v.* Siegel, Cooper & Co., 191 Ill. 226, 60 N. E. 815; Caswell *v.* Worth, 5 E. & B. 849.

[5] Quackenbush *v.* Wisconsin & Minnesota R. Co., 62 Wis. 411, 22 N. W. 519; Colasurdo *v.* Central R. of New Jersey, 180 Fed. 832; Pulliam *v.* Illinois Central R. Co., 75 Miss. 627, 23 So. 359.

[6] Williams *v.* Chicago, Milwaukee & St. Paul Ry. Co., 64 Wis. 1, 24 N. W. 422; Leak *v.* Georgia Pacific Ry. Co., 90 Ala. 161, 8 So. 245.

[7] Wadsworth *v.* Marshall, 88 Me. 263, 34 Atl. 30; Wohlfahrt *v.* Beckert, 92 N. Y. 490; Holum *v.* Chicago, Milwaukee & St. Paul Ry. Co., 80 Wis. 299, 50 N. W. 99.

[8] Carterville Coal Co. *v.* Abbott, 181 Ill. 495, 55 N. E. 131; Chicago-Coulterville Coal Co. *v.* Fidelity & Casualty Co. of New York, 130 Fed. 957; Western Anthracite Coal & Coke Co. *v.* Beaver, 192 Ill. 333, 61 N. E. 335. It seems that the word "wilful" in the statute connotes no moral turpitude, but only a continued failure to comply with the statute. *Cf.* Gully *v.* Smith, 12 Q. B. D. 121.

reasons the court, discloses an intent to establish a new rule of public policy calculated to render this employment less menacing to human life. But this principle of construction seems to have had slight application beyond these cases. Another well-settled exception to the general rule is the absolute liability of railroads for fires caused by passing engines.[9] This construction rests partially on the dangerous character of the business,[10] and so is an illustration of the principle of the Illinois cases. But most reliance has been placed in the statutory provisions that the railroad shall have an insurable interest in the adjoining property.[11] Lastly, there is a long line of decisions holding railroads liable, in spite of the plaintiff's contributing carelessness,[12] for injury caused by the breach of a statutory duty to build fences or erect cattle guards. This rule is reiterated in another recent case. *Chapin* v. *Ann Arbor R. Co.*, 133 N. W. 512 (Mich.). These authorities proceed on the theory that such statutes are, in their nature, police regulations, for the protection, not only of persons and property along the route, but also of the passengers, whose safety can be insured only by offering the railroad some unusual inducement to keep its tracks clear.[13]

LEGALITY OF TRADE UNIONS AT COMMON LAW. — Most of the discussion to-day as to the rights of trade unions is concerned with the question of what acts a trade union can do, and what purposes it can effect without committing a legal wrong. But a recent English case raises the question whether a trade union, as such, is unlawful at common law. *Baker* v. *Ingall*, 132 L. T. J. 131 (Eng., C. A., Nov. 30, 1911). In a suit by a trade union against a member, relief was denied on the ground that the union was an illegal association.

In England, from the time of the earliest reported case[1] on trade unions until the acts of 1824–1825,[2] a union of employees formed for the purpose of increasing wages was regarded as a criminal conspiracy. The acts of 1825 and 1875[3] freed trade unions from the fear of indictment, and those

[9] Mathews *v.* Missouri Pacific Ry. Co., 142 Mo. 645, 44 S. W. 802.

[10] Bowen *v.* Boston & Albany R. Co., 179 Mass. 524, 61 N. E. 141.

[11] Rowell *v.* Railroad, 57 N. H. 132; Laird *v.* Railroad, 62 N. H. 254; Matthews *v.* St. Louis & San Francisco Ry. Co., 121 Mo. 298, 24 S. W. 591. In Peter *v.* Chicago & West Michigan Ry. Co., 121 Mich. 324, 80 N. W. 295, the court went on the principle that *expressio unius est exclusio alterius*, as the only excuse provided in the statute was the use of safe engines. In West *v.* Chicago & Northwestern Ry. Co., 77 Ia. 654, 35 N. W. 479, the court said the statute was intended to settle a vexed question in the law of contributory negligence by eliminating it as a defense.

[12] Flint & Pere Marquette Ry. Co. *v.* Lull, 28 Mich. 510; Harwood's Admx. *v.* Bennington & Rutland Ry. Co., 67 Vt. 664, 32 Atl. 721.

[13] See 2 THOMPSON, COMM. ON THE LAW OF NEGLIGENCE, § 2013. In Kilpatrick *v.* Grand Trunk Ry. Co., 72 Vt. 263, 47 Atl. 827, the court said, by way of *dictum*, that the cattle-guard cases must be explained on the ground that the plaintiff's negligence in letting his animals stray was too remote. But, when it is remembered that the defendant's negligence consists, not in running down the animals, but in failing to erect cattle guards, this explanation seems scarcely plausible.

[1] The King *v.* Journeyman-Taylors, 8 Mod. *10.

[2] THE COMBINATION ACT, 1824 (5 GEO. 4, c. 95); THE COMBINATION ACT, 1825 (6 GEO. 4, c. 129).

[3] THE CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1875 (38 & 39 VICT. c. 86).